

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 667 of 2007()

PETITIONER: PETITIONER/ACCUSED

ANITHA UPADHYAY,11/366,KURIAL LANE,
P.O SOUTH BEACH,KOZHIKODE.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

1. M/S.MALABAR CHIT FUNDS (PVT)LTD,
2ND FLOOR,JAYANTHI BUILDINGS,PALAYAM,KOZHIKODE
REPRESENTED BY M.RASHEED,S/O.ALIKOYA,PANAMKANDY
HOUSE,KOZHIKODE.

2. STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

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Dated this the 13th day of March, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instruments Act. Cognizance has already been and process has been issued to the petitioner. The petitioner has not so far appeared personally before the learned Magistrate. She has entered appearance through counsel.

2. The petitioner has come to this Court with a prayer that the proceedings may be quashed. According to the petitioner, one demand promissory note and two signed blank cheques were handed over to the complainant when a loan transaction was entered into. On the basis of the demand promissory note a suit was instituted. The same has been decreed. Steps for execution are pending. Some amount has been recovered also, it is submitted. According to the petitioner, the present prosecution has been initiated on the basis of the blank signed cheques which were handed over to the complainant along with the demand promissory note at

the time when the initial transaction was entered into as security. One of those two cheques is being misutilised by the complainant. The petitioner had called upon the complainant not to present those cheques and had filed a suit for return of the said two blank signed cheques handed over as security. It is at that juncture, the cheques have been presented and the present complaint filed. According to the petitioner, it amounts to an abuse of process of the court.

3. The case of the complainant is that the cheques were issued for the due discharge of the decree debt - that is to satisfy the decree which was passed on the strength of the demand promissory note. According to the complainant, the cheque was issued only subsequent to the decree and was not handed over as security. In defence in the suit, the present plea has not admittedly been raised by the petitioner. The learned counsel contends that permitting the present prosecution to continue would be transparent abuse of process of the court. In these circumstances, , it is prayed that the proceedings may be quashed.

4. I am of opinion that the factual controversy has to be resolved by evidence to be adduced in the trial. At the moment and with the available inputs, this Court cannot satisfactorily resolve the controversy as to whether the cheque was issued for the due discharge of the decree debt or as security when the initial transaction was entered into. That controversy must certainly be resolved by adducing appropriate evidence by the rival contestants in the trial before the learned Magistrate. It will be presumptuous and impossible to hazard an opinion on that disputed question of fact at this stage. I am, in these circumstances, satisfied that the powers under Sec.482 of the Cr.P.C. do not deserve to be invoked in favour of the petitioner.

5. The learned counsel for the petitioner submits that the petitioner – a woman, will be put to unnecessary hardship, and difficulties if insistence were made ritualistically on the personal appearance of the petitioner. I have no reason to assume that the learned Magistrate would make such insistence. It is for the petitioner to move an application before the learned Magistrate for exemption from personal appearance and I have no reason to

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assume that the learned Magistrate would insist on such personal appearance in a case like this and in the nature of the controversy that is raised.

6. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge